
Judiciary Committee

HB 2576

Title: An act relating to protection of sexual assault victims.

Brief Description: Creating sexual assault protection orders.

Sponsors: Representatives Williams, Green, O'Brien, Kirby, Hunt, Ericks, Simpson, Lovick, McCoy, Lantz, Ormsby, Springer and Conway.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes procedures for sexual assault protection orders.
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Hearing Date: 1/18/06

Staff: Trudes Tango (786-7384).

Background:

There are several types of orders a court may grant that restrict a person's ability to have contact with another person. Although there is potential overlap, the orders generally differ in who they apply to and in what context. For example, no-contact orders are related to criminal proceedings and may be imposed as a condition of release or sentence. Domestic violence protection orders are civil orders and apply to victims of domestic violence committed by family or household members, including persons in dating relationships. Family law restraining orders are also civil, may be issued during dissolution or parentage proceedings, and may contain other provisions related to the dissolution. Anti-harassment orders are civil and may be obtained by a person who is the victim of conduct that is considered seriously annoying, alarming, or harassing. Vulnerable adult protection orders, which are civil, address conduct such as abuse and financial exploitation of certain disabled, elderly adults.

The procedures for domestic violence protection orders are established in the domestic violence prevention act. The act contains provisions for: (a) providing notice to the respondent, including when alternative service of process may be made; (b) ex parte orders when irreparable injury could result if an order is not issued immediately without prior notice; (c) hearings, including hearings by telephone; (e) the relief the court may grant, including restraining the respondent from a dwelling the parties share, or from the petitioner's workplace or school or a daycare; (f) duration of the order; and (g) penalties for violations.

Generally, a violation of the restraint provisions in one of these orders is a gross misdemeanor. However, a violation may be a class C felony under certain circumstances, such as if the person violating the order has two prior convictions for violations.

Summary of Bill:

Procedures for sexual assault protection orders are created.

A. Filing a petition

Any person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident, may file a petition for a sexual assault protection order (SAPO). A third party may file on behalf of a victim who is a minor child, a vulnerable adult, or any other adult who cannot file the petition due to age, disability, health, or inaccessibility.

A person 16 years old or older but under the age of 18 may file a petition on his or her own behalf. A guardian or guardian ad litem does not need to be appointed on behalf of a respondent who is 16 years old or older but under 18. However, the court may, if necessary, appoint a guardian ad litem for any petitioner or respondent party.

The petitioner must file the action in the county or municipality where the petitioner resides. No filing fee may be charged.

A petition must allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration. The petitioner must disclose the existence of any other litigation or any other restraining, protection, or no-contact order between the parties.

B. Service of process

Upon receipt of the petition, the court must order a hearing no later than 14 days from the date of the order. Personal service must be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court must set a new hearing date.

The court must either require additional service attempts or permit alternative service by publication or mail. If the court allows alternative service, the hearing shall be set no later than 24 days from the date of the order. Procedures are established for when a court may allow alternative service of process.

C. Hearings

The court may order a hearing by telephone to accommodate a disability or in exceptional circumstances to protect a petitioner. The court may appoint counsel to represent the petitioner if the respondent is represented by counsel.

In proceedings for a SAPO and prosecutions for violations of a SAPO, the prior sexual activity or reputation of the petitioner is inadmissible except: (a) as evidence regarding past sexual conduct between the petitioner and respondent when consent is an issue; or (b) when constitutionally required to be admitted.

No evidence admissible under those exceptions may be introduced unless a court rules them admissible after an offer of proof made at a hearing held in camera. The offer of proof must include reasonably specific information as the date, time, and place of the past sexual conduct. The court may not admit evidence unless it determines at the hearing that the evidence is relevant and the probative value outweighs the danger of unfair prejudice.

D. Ex parte temporary orders and final orders

If the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent, the court shall issue a SAPO. A petitioner shall not be denied a SAPO because the petitioner is a minor or because the petitioner did not report the assault to law enforcement. The court may not require proof of physical injury.

To obtain an ex parte temporary SAPO, the petitioner must show, in addition to the above, that there is good cause to grant the remedy, regardless of prior service of process or notice upon the respondent because the harm which the order is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given. An ex parte temporary SAPO order is effective for a fixed period not to exceed 14 days, or 24 days if the court allowed service by publication or mail. A full hearing shall be set within that 14 or 24 day period.

Generally, a final SAPO shall be effective for a fixed period of time not to exceed two years. However, if entered in conjunction with a criminal prosecution, the duration of the final order can vary. For example, the order remains in effect until expiration of any community supervision, conditional release, probation, or parole and for an additional period of time thereafter not exceeding two years. The order may be extended one or more times.

E. Relief granted in the order

A SAPO shall order that the respondent "stay away" from the petitioner and shall order any other necessary or appropriate injunctive relief. Monetary damages are not recoverable as a remedy. "Stay away" means to refrain from both physical presence and nonphysical contact with the petitioner directly, indirectly, or through third parties.

The court may not deny a remedy based on evidence that: (a) the respondent has cause for any use of force, unless that cause satisfies the standards for justifiable use of force; (b) the respondent was voluntarily intoxicated; (c) the petitioner acted in self defense or defense of another, provided that if the petitioner used force, such force was justifiable; (d) petitioner did not act in self defense or defense of another; (e) petitioner did or did not leave the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration.

The SAPO must describe each remedy granted by the court in reasonable detail so that the respondent may clearly understand what he or she must do or refrain from doing. The order must contain other information, including a notice of the penalties of knowingly violating the order.

F. Violations of an order

Violations of a SAPO have the same penalties as violations of domestic violence protection orders. It is a gross misdemeanor if the respondent knows of the order and violates the restraint provisions, or a provision excluding the person from a residence, workplace, school, or day care, or a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location. It is a class C felony if: (a) an assault constitutes the violation and the assault does not amount to assault in the first or second degree; (b) any conduct in violation of the order is reckless and creates a substantial risk of death or serious physical injury to another person; or (c) the offender has at least two previous convictions for violating a SAPO or some other protection, no-contact, or anti-harassment order. A violation of the order also constitutes contempt of court.

G. Other provisions

"Sexual conduct," "sexual penetration," and "nonconsensual" are defined. Other provisions are established, including provisions for petitioners keeping their addresses confidential in court filings, modifying the terms of an order, the role of sexual assault victim advocates, and requirements that the court provide informational brochures.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.